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IN THE

Supreme Court of the United States

October Term, 1970
No. 334

BRASWELL MOTOR FREIGHT LINES, INC.,

Petitioner,

vs.

LOCAL FREIGHT DRIVERS LOCAL NO. 208, LINE DRIVERS LOCAL NO. 224, and FREIGHT HANDLERS, CLERKS AND HELPERS, LOCAL NO. 357, each affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

Respondents.

OPPOSITION TO GRANTING OF WRIT OF CERTIORARI.

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OPPOSITION TO GRANTING OF WRIT OF CERTIORARI.

The respondents (herein called "the Unions") oppose the granting of a writ of certiorari sought by the petitioner (herein called "the Employer"), for the following reasons.

1. The Ruling That the Parties' Agreement Resulted in an Enforceable Award Is in Accord With Decisions of Other Courts of Appeals, and Does Not Conflict With Any Decision of This Court.

Both the district court and the Ninth Circuit ruled that the award before them was "final," and thus enforceable within the meaning of this Court's decision in *General Drivers Union v. Riss & Co.*, 372 U.S. 517, 519 (1963). With similar or possibly identical

contractual language, other courts have likewise concluded that the decision of a labor management committee such as the one involved here, is enforceable. *E.g. Truck Drivers Union v. Georgia Highway Express, Inc.*, 328 F.2d 93, 94-95 (5th Cir. 1964); *International Bhd. of Teamsters v. Trudon & Platt Motor Lines, Inc.*, 142 A.2d 484 (Conn. Sup. Ct. of Err. 1958). *See Teamsters Local 745 v. Braswell Motor Freight Lines, Inc.*, 392 F.2d 1, *modified*, 395 F.2d 955 (5th Cir. 1968). *Cf. Fuller v. Highway Truck Drivers*, __ F.2d __ (3d Cir. 1970); *Brotherhood of Teamsters v. Consolidated Freightways Corp.*, 335 F.2d 642 (9th Cir. 1964).

By contending, in essence, that unless an award is contemplated by the parties to be self enforcing it is not "final" and thus not judicially enforceable (see Petition for Writ of Certiorari at 16-17), the Employer seeks to create an issue where there is none. The only "finality" which the cases have required of an award is that there be no further *internal* appellate review;[1] and the fact that an award which is not further appealable is subject either court confirmation or to enforcement by self-help, has never been considered as determinative of whether it is final.

All of the courts which acted in this case made the factual determination that under the parties' agreement the unanimous decision of the committee which rendered the award was meant to be non-appealable to any internal appellate review, and that the parties in-

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[1] *See, e.g., Transport Workers Union v. Philadelphia Transp. Co.*, 228 F. Supp. 423, 425 (E.D. Pa. 1964); *Local 24, Int'l Bhd. of Elec. Workers v. Wm. C. Bloom & Co.*, 242 F. Supp. 422, 425 (D. Md. 1965).

tended the decision to be thereafter conformed to by the losing side or enforced by the prevailing side (either through self-help or by court action). This being so, the courts below further held that the award met the requirements of finality set forth in *General Drivers Union v. Riss & Co.*, 372 U.S. 517, 519 (1963). There is no basis for setting aside these factual determinations, and they are in harmony with principles enunciated by this Court and others in cases under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185.

The district court and the court of appeals declined to pass on the further contention of the Employer (as set forth in 1[b] of the Questions Presented), to the effect that the award lacks finality because of a clause in the contract which states that the Unions shall not be bound by any interpretation of the agreement unless they stipulate to be bound. Here, by filing their grievances and by seeking court confirmation, the Unions stipulated to be bound by the outcome; therefore, the Employer's argument is simply inapplicable to the facts of this case.

2. The Courts Below Properly Refused to Review the Merits of the Award, and There Is No Conflict With Decisions of This Court or Other Courts.

a. The Decisions Below Are Consistent With Decisions of This Court.

In formulating questions numbered 2 and 3, the Employer makes it apparent that it seeks to have this Court review the merits of the award rendered by the grievance committee, a practice which this Court has declined to condone. *See United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596 (1960).

The Unions' grievances alleged that the Employer violated specific clauses of the agreement—including the clause permitting strikes under certain circumstances [Tr. 88]—when the Employer refused to grant full seniority rights to employees who had been on strike [Tr. 144-45; 146-47; 148-49]. The rules applicable to these employees were set forth in the parties' contract, and when the Employer and the Unions disagreed on what rights, if any, the returning employees had, the Unions submitted the questions to the grievance committee provided for by the contract.

We can assume, without it being necessary to know, that the grievance committee determined that the strike did not violate the parties' agreement. This Court has held that "arbitrators have no obligation to the court to give their reasons for an award," *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598 (1960), and indeed, in this case the arbitrators gave no reason.

The courts below properly refrained from accepting the Employer's invitation to speculate on the committee's reasoning. Instead, they found that the issue presented to the grievance committee by the Unions was arbitrable, *i.e.*, that the dispute involved an interpretation or application of a specific provision of the agreement; and once the courts arrived at that conclusion their inquiry properly ended, for the question of by what process of reasoning the grievance committee arrived at its decision is irrelevant.

The last two numbered points of the Employer's Petition in this case presuppose that the grievance committee used an unlawful or improper reasoning process in arriving at its decision. For the Court to

accept this presupposition (which may or may not have been the basis of the committee's decision) would involve a review of the merits of the grievance and would be, therefore, beyond the scope of court review of an arbitral award.

Assuming, however, that the basis of the committee's decision is relevant, the fact that it decided that the employees' strike was not in violation of the agreement comports, and does not conflict with the holding in *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956). In *Mastro Plastics;* the court recognized that a no-strike pledge could be broadly or narrowly drawn, and the question which the Court there answered in the negative was, "Does the collective-bargaining contract [before the Court] waive the employees' right to strike against the unfair labor practices committed by their employer?" 350 U.S. at 279. To resolve this issue the Court did not turn to those provisions of the Labor Management Relations Act which the National Labor Relations Board is exclusively designated to apply, but rather, the Court held that "the answer turns upon the proper interpretation of the particular contract before us." *Ibid.*

The grievance committee which was commissioned to interpret the contract in this case concluded that the strike did not violate the agreement. But all it was saying was that the no-strike clause was not so broadly drawn as to outlaw the employees' conduct.[2]

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[2]The decision of the committee was not rendered until November 11, 1965 [Tr. 320, 344], which was following the finding of the National Labor Relations Board that the Employer had been committing unfair labor practices. *See Braswell Motor Freight Lines, Inc.*, 154 N.L.R.B. 101 (July 30, 1965).

Even a cursory reading of *Mastro Plastics* reveals that the Employer is, in citing that case, attempting to manufacture an issue which isn't there. There was not, as argued by the Employer, a "judicial exemption [to no-strike agreements] created by this Court in *Mastro Plastics*" (Petition for Writ of Certiorari at 27). It was in that case, as it is here, simply a matter of contract interpretation. The plain fact is that the Employer is unhappy with the interpretation made by the committee; but since it was the committee's interpretation for which the Employer bargained, it is now bound. *See United Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 568 (1960).

b. The Decisions Below Are Not in Conflict With Decisions of Other Courts.

Citing *Stillpass Transit Co. v. Ohio Conference of Teamsters*, 382 F.2d 940 (6th Cir. 1967), the Employer suggests a conflict among the courts of appeals. The *Stillpass* case involved an employer's suit for damages, which the Sixth Circuit held was not required to be arbitrated. The present case involves a determination by two district courts[3] and by the Ninth Circuit that the Unions' claim that the Employer violated specific clauses of the parties' agreement, is arbitrable. In addition to not being inconsistent, there is no similarity between the two cases.

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[3]The Employer's attempt to enjoin the Unions' grievances from being processed was rebuffed in *Braswell Motor Freight Lines, Inc. v. International Bhd. of Teamsters*, 58 L.R.R.M. 2331 (S.D. Cal. 1964), where the district court held the grievances to be arbitrable. That case is pending before the Ninth Circuit as No. 20,146.

Conclusion.

The decisions below were in harmony with decisions of this Court and of others, and no novel issues are presented by the Petition.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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